

***THE HON'BLE SRI JUSTICE SUJOY PAUL**

+CIVIL REVISION PETITION No.1609 of 2024

% 21-06-2024

#Swathi Srivatsav

...Petitioner

vs.

\$Rohit Kumar.

... Respondent

!Counsel for the Petitioner: Sri R.A.Achuthanand.

^Counsel for Respondent: -

<Gist :

>Head Note :

? Cases referred

1. 2005 SCC OnLine AP 447.
2. 2018 (5) ALD 461.
3. 2015 ALD 4 757.
4. AIR 1955 SC 425.
5. (1975) 1 SCC 774.
6. (1976) 1 SCC 719.
7. (1984) 3 SCC 46.
8. (2005) 4 SCC 480.
9. (2013) 11 SCC 122.

IN THE HIGH COURT FOR THE STATE OF TELANGANA**HYDERABAD**

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CIVIL REVISION PETITION No.1609 of 2024

Between:

Swathi Srivatsav.

...Petitioner

vs.

Rohit Kumar.

... Respondent

JUDGMENT PRONOUNCED ON: 21.06.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL**CIVIL REVISION PETITION No.1609 of 2024****ORDER:**

The petitioner-wife filed an anti suit perpetual injunction for restraining the respondent-husband from proceeding with the dissolution of marriage before the Family Court at Wellington, New Zealand. The petitioner-wife executed a Special Power of Attorney dated 23.03.2022 authorizing her father to file plaint under Order VII Rule 1 read with Section 26 of the Civil Procedure Code, 1905 (CPC). The said Original Suit (O.S) was not numbered and registered by the Office of the Court below, but the same was taken up as SR No.682 of 2024 pregnant with number of office objections. The petitioner in order to satisfy the Court about the objections argued the matter on office objections, but the Court below by docket order dated 09.05.2024 decided to return the said suit. This docket order is subject matter of challenge in the present Civil Revision Petition before this Court under Article 227 of the Constitution.

2. Shorn of unnecessary details, as pleaded the relevant facts are that the petitioner and respondent solemnized their marriage

as per Hindu rites and customs on 19.11.2019 at Gaya (Bihar). The marriage was registered under provisions of Special Marriage Act, 1954, at Hyderabad, Telangana, on 24.04.2019. The respondent resided at New Zealand and due to matrimonial discord between the petitioner and respondent, the petitioner returned to India on 07.06.2020. The petitioner later got admission in London in MBA International course and presently, she is pursuing her education in London.

3. The petitioner filed application in M.C.No.348 of 2022 on the file of the II Additional Family Court, Hyderabad under Section 125 of the Criminal Procedure Code, 1973 and DVC Act. In addition, she also filed O.P.No.480 of 2024 under Section 9 of the Hindu Marriage Act, 1955, on the file of Principal Family Judge, Hyderabad, seeking restitution of conjugal rights. The other proceedings were also filed by the petitioner under Sections 498-A, 307 and 406 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Dowry Prohibition Act, 1961. The said complaint was taken on record by XVIII Additional Chief Metropolitan Magistrate at Nampally, Hyderabad and accordingly, numbered as Crime No.381 of 2020 and the same has been registered in C.C.No.7321

of 2021 on the file XIII Additional Chief Metropolitan Magistrate, Hyderabad. The respondent has also been contesting the said proceedings.

4. The Office of the Court below raised the following objections in Sr.No.682 of 2024: **1.** SPA to be filed in “Original” as mentioned in OP and the same has to be validated. **2.** Suit to be filed in OP format. **3.** Address proof of description to be filed and jurisdiction to be noted as per Sec.19 of HM Act, Jurisdiction para to be mentioned correctly and form 8 to be filed. **4.** Main OP, Vakalath, Sec.13 petition and Rule 33 Affidavit to be signed by the petitioner only and the same are to be duly affixed by the concerned embassy seal. **5.** Latest photograph of the petitioner and the GPA holder are to be affixed on OP and duly attested by the petitioner. **6.** ID proof of petitioner to be filed. **7.** Explain how this Court is having jurisdiction for the so called relief prayed by the petitioner. **8.** Neat copy of OP to be filed by correcting objection No.1 and 2. **9.** CF to be affixed on CC copies. **10.** IA to be corrected as petitioners and respondents respectively and neat copies to be filed. **11.** Rule 33 affidavit to be filed and computer cop to be filed.

5. The plaint filed by the petitioner under Order VII Rule 1 read with Section 26 of the CPC, shows that it is filed along with Special Power of Attorney (SPA) dated 23.02.2022. The plaint is signed by the counsel for the petitioner as well.

6. The petitioner was heard by the learned Court below on the question of aforesaid defects pointed out by the Office of the Court below. In turn, the impugned docket order dated 09.05.2024 came to be passed, whereby, the copy of petition and Vakalath were returned to the petitioner by upholding certain objections.

Contentions of the petitioner:-

7. Sri R.A. Achuthanand, learned counsel for the petitioner submits that the Court below has erred in holding that the suit can be numbered as Original Petition (O.P.) only and it cannot be registered as Original Suit (O.S.). Criticizing this finding, it is contended that the Court below has failed to see the nature of the suit i.e., the suit for anti suit perpetual injunction. As per Section 7 (1) (d) of the Family Courts Act, 1984, a suit/proceedings of this nature arising out of marital relationship needs to be registered as O.S. and not O.P. The Court below has erroneously relied upon the judgment in the case of **V. Pranav Kumar vs. V. Sulekha @**

Payal¹ and also erred in relying on the Circular issued by High Court in ROC.No.1643/SO/1995 dated 16.06.2004. The said circular is general in nature cannot override the specific provisions of the Family Courts Act, 1984.

8. Furthermore, it is urged that O.P. can only be filed under the provisions of the Hindu Marriage Act, 1955. The said Act deals with dissolution of marriage on different grounds, restitution and maintenance. As per the Hindu Marriage Act, 1955, there is no provision for filing suit under the said Act. By placing reliance on the judgment in the case of **V. Pranav Kumar** (cited supra), it was argued that para 8 clearly lays down that the applications filed before the Family Courts are not be treated as suit. The said judgment cannot be made applicable for the present dispute in view of Section 7 (1) (d) of the Family Courts Act, 1984, which has not been considered and hence, the said judgment is distinguishable.

9. It is further urged that the procedural technicalities should not come in the way of dispensation of justice. The Court below has taken a hyper technical view and did not consider Rules 32

¹ 2005 SCC OnLine AP 447

and 33 of the Andhra Pradesh Civil Rules of Practice, in proper perspective. The view taken by the Court below runs contrary to the principles laid down by this Court in the case of **Ruhina Khan vs. Abdur Rahman Khan**².

10. The petitioner in this petition in great detail dealt with each of the objection raised by the Office of the Court below.

11. Heard at length.

12. Since the petitioner's suit is returned without putting the other side to notice, this Court deems it proper to hear the petitioner and decide the matter at this stage only.

Findings:-

13. The Court below has decided to return the brief mainly for twin reasons namely: (1) the petitioner filed petition in F.C.O.S and Section people returned the petition by stating that it must be filed as O.P. and not as O.S, in view of judgment in the case of **V. Pranav Kumar** (cited supra) and the Circular issued by High Court in ROC.No.1643/SO/1995 dated 16.06.2004. The petition deserves to be returned because the Court cannot go beyond the

² 2018 (5) ALD 461

circular issued by the High Court. (2) the judgment of this Court in the case of **Ruhina Khan** (cited supra) is relating to property whereas, the instant suit is relating to matrimonial dispute and it is personal in nature. Therefore, the petitioner has to file petitions under Rules 32 and 33 of the Civil Rules of Practice and since there is no endorsement of the counsel on the record on re-submission of the petitioner, the petition deserves to be returned.

14. Before dealing with the contentions of the petitioner, it is apposite to reproduce Rules 32 and 33 of the Civil Rules of Practice, which are as under:

Rule 32:- Party appearing by Agent:	Rule 33:- Signing or verification by Agent:
<p>(1) When a party appears by any agent, <u>other than an advocate</u>, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorising him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.</p> <p>(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party;</p>	<p>If any proceeding, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceeding, and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognised agent of the party as defined by Order III, Rule 2 of the Code and is duly authorised and competent so to do.</p>

and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognised by the Court.	
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[Emphasis Supplied]

15. At the cost of repetition, it is noteworthy that the wife has signed Special Power of Attorney in favour of her father and plaint is signed by an advocate. Rules 32 and 33 became subject matter of consideration in various matters. After taking stock of series of cases decided on this aspect, in the case of **Ruhina Khan** (cited supra), it was held as under:

“Rule 32 deals with an agent other than an Advocate appearing for a party while Rule 33 deals only with signing or verification of proceedings by an agent. Rule 32 (1) makes it clear that it has application to a situation where a party appears by an agent other than an Advocate. Therefore, the said agent would appear for the party in all respects and not merely for the purpose of signing and verifying pleadings. When the party appears through an agent other than an Advocate, the agent is required, before he appears or acts in the Court or makes an application thereto, to file the power of attorney or written authority or a property authenticated copy thereof along with an affidavit that the said authority, whereby he is empowered to do so, is still subsisting.

Rule 33 deals with an agent signing and verifying on behalf of his principal and states that if any proceeding, which under **any provision of law** or the Civil Rules of Practice, is required to be signed or verified by a party but is signed or verified by the agent, **a written authority** in his behalf signed by the party shall be filed in Court, together with an **affidavit verifying the** signature of the party and stating the reason of his inability to sign or verify the proceeding and stating the means of knowledge of the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognized agent of the party, as defined by Order 3 Rule

2 C.P.C., and is duly authorized and competent to do so. [Para 12]

Para No.30:-

30. In effect, the Division Bench held that where the GPA holder merely signs the pleadings in a case where the principal is represented by a legal practitioner it is sufficient if Court satisfies itself that he has the authority to sign such pleadings and the filing of an affidavit is not mandatory. Any defect in this regard can also be cured at a later stage by convincing the Court that such GPA holder was duly authorized by the principal to represent him in the matter. However, in a case where the GPA holder not only signs the pleadings but also adduces evidence and advances arguments on behalf of the principal, he would necessarily have to file an affidavit of the principal affirming that he authorized the GPA holder to do so.”

[Emphasis Supplied]

16. A plain reading of the aforesaid findings makes it clear that the point involved is no more *res integra*, Justice P. V. Sanjay Kumar (as his Lordship then was) poignantly held that Rule 32 deals with agent other than advocate appearing for party, whereas, Rule 33 operates regarding signing or verification of proceedings by an Agent. The impugned order of Court below in this regard is reproduced hereunder in toto for ready reference:

“SR No.682/2024 Dt:09-5-2024

The petitioner filed the petition under FCOS and the Section people returned the petition that the petition shall be filed under OP, but not under OS and the petitioner vehemently argued before the Court that the suit is filed for anti-suit injunction and he relied upon ***Padmini Hindupur Vs.,***

Abhijit S Bellur, it was held that the petitioner herein filed the petition before Maryland Avenue, USA that her husband residing in that place and she filed anti-suit injunction in favour of her and restrain the defendant and his agents not to move any divorce petition, but in the present case, the petition is filed for anti-suit injunction to be granted against the defendant restraining the defendant from proceeding and further participating in the proceedings in appeal FAM-2023-095-005695 initiated by him in the Hon'ble Family Court, Wellington, New Zealand.

The Court relied upon **V. Pranav Kumar Vs., V. Sulekha @ Payal and others**, it was held that any family matters should be numbered as OP, but not suits and the Hon'ble High Court issued a circular in ROC.No.1643/SO/1995 dated 16.06.2004 directing the Family Court to number all the cases filed before them as OP and collect fixed Court fee of Rs.10/-, under such circumstances this petition is returned. This Court cannot go beyond the Hon'ble High Court circular.

In **Dasam Vijay Rama Rao Vs., M. Sai Sri**, held that “The term power “power of attorney” indicates a power or authority under seal. A “power of attorney” is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. “Power of attorney” is not contract, but is merely document evidencing to third parties existence of agency relationship and powers of agent. In *Corpus Juris Secundum* it is stated as; Authority may be conferred on an agent by a written appointment, and if the writing is formal the authority is said to be conferred by letter of attorney and the agent is, an attorney in fact.”

The counsel for the petitioner also argued that there is no necessity to file Rule 33 petition in GPA and the petitioner relied upon **Ruhina Khan and another Vs., Abdur Rahman Khan (died) per LRs and others**, it was held Rule 32 and Rule 33 requirements of the nature of the procedure prescribed by discussed in Order 3 Rule 1, 2, 6, 14 and 15 of CPC in the said citation the facts are that it was relied to property whereas the present petition is filed before Family Court and it is a personal. Therefore, the petitioner has to file Rule 33 petition along with Rule 32 petition and there is no endorsement of the counsel on the record on re-submission of the petition. The petition copy, vakalath and Section 13 of

Family Court Act not signed by the principal petitioner. From the above reasons, this petition is returned.”

[Emphasis Supplied]

17. The aforesaid order shows that the Court below has not taken pains to deal with the contention of the petitioner based on Section 7 (1) (d) of the Family Courts Act, 1984, the said provision reads as under:

“Section 7:- Jurisdiction.—

(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.— The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a)...

(b)...

(c)...

(d) **a suit** or proceeding for an order or injunction in circumstance arising out of a marital relationship;

...” [Emphasis Supplied]

18. This Court finds substance in the argument of the learned counsel for the petitioner that no administrative

instruction/circular issued by the High Court can override or supersede the provisions of the Family Courts Act, 1984. Even otherwise, the Circular dated 16.06.2004, in my opinion, cannot be pressed into service in a suit of this nature, which is covered under Section 7 (1) (d) of the Family Courts Act, 1984.

19. This Court is constrained to observe that the impugned docket order dated 09.05.2024 is too sketchy, too short and too cryptic in nature. In 2nd para of the said order, reliance is placed on the judgment in the case of **Dasam Vijay Rama Rao vs. M. Sai Sri**³, but no finding is given as to how that judgment is applicable and can be utilized for returning the plaint of the petitioner. Further, in the last para of the impugned order, the Court below relied on the judgment of **Ruhina Khan** (cited supra) and tried to distinguish it for twin reasons. *Firstly*, in case of **Ruhina Khan** (cited supra), the matter was relating to property, whereas in the instant, the suit is relating to matrimonial dispute, which is personal. Pertinently, the subject matter of interpretation before this Court in **Ruhina Khan** (cited supra) was about interpretation of Rules 32 and 33 of the Civil Rules of Practice. A conjoint

³ 2015 ALD 4 757

reading of both Rules makes it clear that they are not confined to property dispute only. The Court below has failed to take note of the word “**OR**” (highlighted hereinabove) in Rule 32 aforesaid. The Rule 32 is in two parts. The first part before the use of word “**OR**” cannot be confined to property disputes only. The Court below has miserably failed to see aforesaid aspect and mechanically came to hold that the judgment in the case of **Ruhina Khan** (cited supra) cannot be pressed into service because in that case it was a property dispute, whereas, the present case is relating to matrimonial dispute. The view taken by the Court below runs contrary to Rule 32. The opening sentence of Rule 33 has not been minutely considered by the Court below while passing the impugned order. The words “if any proceeding” and “under any provision of law” are significant and makes the provision very wide. Thus, by no stretch of imagination, Rules 32 and 33 can be said to be confined to land or property dispute only.

20. *Secondly*, the Court below in the last para of the impugned order opined that the petitioner has to file Rule 33 petition along with petition under Rule 32. This Court in **Ruhina Khan** (cited supra) made it crystal clear that the requirement to file petition

under Rule 33 is not mandatory. Even if there exists a defect in this regard, the same can be cured at later stage by the petitioner. The said findings of a binding judgment has escaped notice of the Court below while passing the impugned order.

21. The procedural law is made to achieve justice and not to defeat it. In the opinion of this Court, the Court below has not taken the view to advance the cause of justice and indeed permitted itself to be strangled by hyper technicalities. This is settled law that all the rules of procedure are the handmaid of justice. The Apex Court in **Sangram Singh v. Election Tribunal, Kotah**⁴ opined that a code of procedure must be regarded as such. It is “procedure”, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against. The Apex Court in **Sushil Kumar Sen v. State of Bihar**⁵ opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

⁴ AIR 1955 SC 425

⁵ (1975) 1 SCC 774

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence-processual, as much as substantive. In, **State of Punjab v. Shamlal Murari**⁶, the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In, **Ghanshyam Dass v. Dominion of India**⁷, the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle. In, **Kailash v. Nanhku**⁸, *the Apex Court held that the provisions of Civil Procedure Code or any other procedural enactment ought not to*

⁶ (1976) 1 SCC 719

⁷ (1984) 3 SCC 46

⁸ (2005) 4 SCC 480

be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

22. In view of foregoing discussion, it can be safely held that neither the judgment in the case of **V. Pranav Kumar** (cited supra) nor the Circular of High Court in ROC.No.1643/SO/1995 dated 16.06.2004 comes in the way of the Court below to register the matter as O.S. In, **Kailash** case (cited supra), it was made crystal clear by the Supreme Court that the provisions of the Civil Procedure Code or any other procedural enactment should not be a barrier to make the Courts helpless to meet extraordinary situations. As per Section 7 (1) (d) of the Family Courts Act, 1984, the matter could be certainly registered as O.S. (suit) and there was no legal impediment before the Court below to do the same. This is trite that as per the concept of “*dominion paramountcy*” no executive instruction like Circular of High Court can prevail over the statutes or provisions of an Act {see **Pradip Kumar Maity v. Chinmoy Kumar Bhunia**⁹}.
Chinmoy Kumar Bhunia⁹.

23. In nutshell, in the opinion of this Court, the plaint was returned to the petitioner in a mechanical way. Neither his

⁹ (2013) 11 SCC 122

arguments were considered in *extenso*, nor findings were given in detail dealing with each of the objections raised by the Office. This Court hopes that henceforth, the suits will not be returned in such mechanical way.

24. In view of foregoing discussion, this Court is unable to give its stamp of approval to the impugned order dated 09.05.2024. Resultantly, the said order is set aside and the Court below is directed to register the O.S. and proceed with the matter in accordance with the law. It is made clear that this Court has not expressed any opinion on maintainability of suit and on other objections regarding which no decision was taken by the Court below while passing the order dated 09.05.2024.

25. In the result, the Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

JUSTICE SUJOY PAUL

Date: 21.06.2024

Note:

LR marked.

B/o-GVR